

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2008-709

ARTHUR RAY BARNES II
1186 Leff Street
San Luis Obispo, CA 93401

OAH No. L2010070976

Psychiatric Nurse License No.
PT 34245

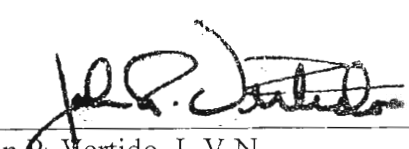
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on April 1, 2011.

IT IS SO ORDERED this 2nd day of March, 2011.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ARTHUR RAY BARNES II,

Psychiatric Technician
License No. PT 34245

Respondent.

Case No. PT-2008-709

OAH Case No. L2010070976

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in San Luis Obispo, California, on December 2, 2010.

Susan Melton Wilson, Deputy Attorney General, represented Complainant, Teresa Bello-Jones, J.D., M.S.N., R.N.

Respondent represented himself.

Complainant seeks to discipline Respondent's license on the basis of two criminal convictions and the conduct underlying the convictions. Respondent presented evidence in mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence was received at the hearing. The record was left open for Respondent to submit work performance evaluations. On December 13, 2010, three documents were received, evaluations dated April 2008, April 1, 2009, and April 1, 2010, which documents, with the facsimile transmittal sheet, were marked as Exhibit A. On December 16, 2010, and again on December 21, 2010, the latter enclosing copies of Respondent's evaluations, Deputy Attorney General Melton Wilson stated she had no objection to the receipt of Respondent's documents into evidence. Complainant's transmittals were marked as Exhibit 13. Exhibit A was received into evidence, and the matter was submitted for decision on December 16, 2010.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. The Board issued psychiatric technician license number PT 34245 to Respondent on May 21, 2008. The license is active and expires on April 30, 2012, unless renewed. The license has not been previously disciplined.

3. On May 17, 2005, in the Superior Court, County of San Luis Obispo, San Luis Branch, State of California, in case number M000372123, Respondent was convicted, on his plea of no contest, of violating Penal Code section 415, subdivision (1) (fight in a public place), a misdemeanor. The court placed Respondent on bench probation for one year, on terms and conditions that included payment of a \$100 fine and payment of restitution. The facts and circumstances surrounding the conviction are that, on April 23, 2005, Respondent was involved in a fist fight with others attending a party at a private residence.¹

4. a. On September 29, 2008, in the Superior Court, County of San Luis Obispo, State of California, in case number M000422345, Respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. The court placed Respondent on probation for three years, on terms and conditions that included service of two days in jail, payment of a \$1,726 fine, and completion of a three-month substance abuse program.

b. The circumstances surrounding the conviction are that on August 30, 2008, Respondent was stopped by police officers after he backed his vehicle onto the sidewalk while attempting to park. His blood alcohol level at the time was .12 percent.

5. a. On December 15, 2008, in the Superior Court, County of San Luis Obispo, State of California, in case number M000425661, Respondent was convicted, on his plea of no contest, of violating Health and Safety Code section 11357 (possession of less than one ounce of Marijuana), a misdemeanor. The court assessed a fine of \$480, which Respondent paid on the same date.

b. The circumstances surrounding this conviction are that on November 4, 2008, Respondent was the passenger of a vehicle that was stopped for failing to stop at the limit line of a stop sign. Upon making contact with the driver, the officer smelled unburned Marijuana inside the vehicle. When the officer asked who had Marijuana, Respondent said he did and retrieved a clear plastic bag from a front pocket of his pants.

6. The convictions set forth in factual finding numbers 4 and 5, taken together, are substantially related to the qualifications, functions, and duties of a psychiatric technician. Respondent showed poor judgment and reckless disregard for the health and safety of himself and others by driving while under the influence of alcoholic beverages, which poor judgment is reinforced by the second conviction.

¹Respondent had previously disclosed the conviction on his application for licensure, and the conviction was only charged as a factor in aggravation, not as cause for discipline.

7. The conviction set forth in factual finding number 5 constituted a violation of probation for the conviction set forth in factual finding number 4. With this exception, Respondent has complied and is complying with the terms of criminal probation for the September 29, 2008, conviction.

8. Respondent acknowledged his mistakes and did not dispute or minimize any of his misconduct. On August 30, 2008, he drank alcoholic beverages at a local bar in celebration of a friend's birthday. He rarely drinks alcoholic beverages, and the last time he recalled having a drink was on January 1, 2010. He described himself as a person who does not drink and drive, testimony consistent with the single driving under the influence conviction. He started smoking Marijuana after the August 2008 arrest, and has not smoked the substance since November 4, 2008. He has not consumed alcoholic beverages or used controlled substances while at work.

9. Respondent is 25 years old. His girlfriend gave birth to a son in 2010, and he provides support for both. Respondent spends most of his free time at home with his family, and wants to be a role model for his son.

10. Respondent has been employed at Atascadero State Hospital since February 13, 2007. He enjoys his work, and has received good evaluations. He is punctual and competently performs his assignments. His supervisor wrote on the last evaluation: "Arthur, you continue to be an asset to Unit 30. You have been a consistent go to person when it comes to backing up the med person and anything else you have been asked to do. You have been a consistent and dependable resource for the unit. When you are faced with a question you generally know what resources are available to you. This has been a tremendous help. I am optimistic as you progress through your career as a Psych. Tech. I support your goals for the next year. Contact me with any questions or concerns. My door is always open." (Exhibit A, at p. 7.)

11. The Board has incurred costs of \$3,151.75 in charges from the Attorney General's Office in connection with the investigation and enforcement in this matter, which costs are deemed reasonable.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code² section 4521, subdivision (f), and California Code of Regulations, title 16, section 2578, in that he was convicted of crimes substantially related to the qualifications, functions, and duties of a psychiatric technician, by reason of factual finding numbers 4, 5 and 6.

²All further references are to the Business and Professions Code.

2. Cause exists to suspend or revoke Respondent's license pursuant to section 4521, subdivision (a)(6), in that he was convicted of crimes involving the consumption of alcoholic beverages and the possession of a controlled substance, by reason of factual finding numbers 4, 5 and 6.

3. Cause exists to suspend or revoke Respondent's license pursuant to section 4521, subdivision (a)(4), in that he was in possession of a controlled substance, by reason of factual finding number 5.

4. Cause exists to suspend or revoke Respondent's license pursuant to section 4521, subdivision (a)(5), in that he consumed alcoholic beverages to an extent and in a manner dangerous or injurious to himself and others, by reason of factual finding number 4.

5. Cause exists to order reimbursement of \$3,151.75 as the Board's costs of investigation and enforcement pursuant to section 125.3, by reason of factual finding number 11 and legal conclusion numbers 1 through 4.

6. All evidence presented in mitigation and rehabilitation, as well as that presented in aggravation, has been considered in light of the criteria set forth in California Code of Regulations, title 16, section 2579. In brief, Respondent's driving under the influence conviction constitutes an isolated instance. The Marijuana possession conviction was also a single event, and did not involve driving. While the two instances taken together raise concerns about Respondent's judgment, the circumstances are sufficiently dissimilar and have not been repeated over a significant period, to lessen concern about a continued pattern of poor judgment. These convictions, as well as the fight incident, involve the acts of a young man, and the evidence establishes Respondent's subsequent maturation and rehabilitation. Respondent no longer uses Marijuana, and rarely consumes alcoholic beverages. There have been no other incidents since November 2008, and, significantly, Respondent has become a father and provides for his family. Respondent has now been working for over three years without incident. His license has not been previously disciplined. In these circumstances, revocation of his license is not necessary for the protection of the public. However, a period of monitoring is warranted to ensure full rehabilitation. The order that follows is necessary and sufficient for the protection of the public.

ORDER

1. Psychiatric Technician License No. PT 34245 issued to Respondent Arthur Ray Barnes, II, is revoked; provided, the revocation is stayed for three years on the following terms and conditions.

a. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five days of occurrence.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the Respondent to the Board. Respondent shall also submit to the Board a recent 2" x 2" photograph of himself within 30 days of the effective date of the decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

b. **COMPLIANCE WITH PROBATION PROGRAM.** Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program. Upon successful completion of probation, the Respondent's license will be fully restored.

c. **SUBMIT WRITTEN REPORTS.** Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

d. **NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S).** Respondent shall notify the Board, in writing, within five days of any change in address or telephone number(s). Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

e. **NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE.** Respondent shall notify the Board, in writing, within five days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California.

Respondent shall provide written notice to the Board within five days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five days, upon his return to California.

f. **MEETINGS WITH BOARD REPRESENTATIVE(S).** Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

g. **NOTIFICATION TO EMPLOYER(S).** When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five days of such an event.

Respondent shall notify the Board, in writing, within five days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

h. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS.** Respondent shall work in his licensed capacity in the state of California. This practice shall consist of no less than six continuous months and of no less than 20 hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

i. **SUPERVISION REQUIREMENTS.** Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to the Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

j. **COMPLETION OF EDUCATIONAL COURSE(S).** Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within 30 days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall submit 'original' completion certificates to the Board within 30 days of course completion.

k. **MAINTENANCE OF VALID LICENSE.** Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two years from the effective date of the Board's decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

l. **COST RECOVERY REQUIREMENTS.** Respondent shall reimburse the Board for its reasonable costs of investigation and enforcement, \$3,151.75, pursuant to Business and Professions Code Section 125.3. He shall make timely payment, in equal quarterly payments during the period of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

If Respondent has not complied with this condition during the probationary period, and Respondent presents sufficient documentation of his good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives may, upon written request from the Respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the Board shall not renew or reinstate the license of any Respondent who has failed to pay all the costs as directed in a Decision.

m. **LICENSE SURRENDER.** During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender: (1) Three years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or (2) One year for a license surrendered for a mental or physical illness.

n. **VIOLATION OF PROBATION.** If Respondent violates the conditions of his probation, the Board, after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline of the Respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

2. Respondent Arthur Ray Barnes, II, is ordered to reimburse the Board the sum of \$3,151.75 for its costs of investigation and enforcement, in equal quarterly payments during the period of probation. If probation is tolled while Respondent is not employed, this cost repayment obligation shall also be tolled.

DATED: 11/6/10


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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FILED

APR 27 2010

Board of Vocational Nursing
and Psychiatric Technicians

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8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. PT 2008-709

12 **ARTHUR RAY BARNES, II**
1186 Leff Street
13 San Luis Obispo, CA 93401

A C C U S A T I O N

14 Psychiatric Technician License No. PT 34245

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely
20 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
21 Psychiatric Technicians ("Board"), Department of Consumer Affairs.

22 **Psychiatric Technician License**

23 2. On or about May 21, 2008, the Board issued Psychiatric Technician License Number
24 PT 34245 to Arthur Ray Barnes, II ("Respondent"). The psychiatric technician license was in full
25 force and effect at all times relevant to the charges brought herein and will expire on April 30,
26 2010, unless renewed.

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1 **COST RECOVERY**

2 6. Code section 125.3 provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Criminal Convictions)**

8 7. Respondent is subject to disciplinary action pursuant to Code section 4521,
9 subdivision (f), in that Respondent has been convicted of the following crimes that are
10 substantially related to the qualifications, functions, and duties of a licensed psychiatric
11 technician:

12 **DRIVING UNDER THE INFLUENCE (2008)**

13 a. On September 29, 2008, in the Superior Court, San Luis Obispo County, San Luis
14 Obispo Branch, California, in the matter entitled *People vs. Arthur Ray Barnes, II*, 2008, Case
15 No. M422345, Respondent was convicted by the court following his plea of no contest to a
16 violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol
17 or drugs), a misdemeanor.

18 b. The circumstances of the crime are that on or about August 30, 2008, following a
19 traffic stop, Respondent was arrested for driving under the influence of alcohol or drugs.
20 Respondent consented to a breath test, which was conducted at the scene with a result of .12/.13%
21 blood alcohol content.

22 **POSSESSION OF MARIJUANA (2008)**

23 c. On December 15, 2008, in the Superior Court, San Luis Obispo County, San Luis
24 Obispo Branch, California, in the matter entitled *People vs. Arthur Ray Barnes*, 2008, Case No.
25 M425661, Respondent was convicted by the court following his plea of no contest to a violation
26 of Health and Safety Code section 11357, subdivision (b) (possession of less than 1 ounce of
27 Marijuana), a misdemeanor.

1 d. The circumstances of the crime are that on or about November 4, 2008, Respondent
2 was cited following a traffic stop. Respondent was a passenger in the vehicle that was stopped
3 and was cited after he was found to be in possession of less than 1 ounce of Marijuana. Said
4 offense was a violation of Respondent's court ordered probation for the conviction set forth in
5 subparagraph a, above.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Criminal Convictions Involving Alcohol and/or the Controlled Substance Marijuana)**

8 8. Respondent is subject to disciplinary action pursuant to Code section 4521,
9 subdivision (a)(6), on the grounds of unprofessional conduct, in that Respondent has been
10 convicted of crimes involving the consumption of alcohol and the possession of the controlled
11 substance Marijuana, as more particularly set forth in paragraph 7, above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Possession of the Controlled Substance Marijuana)**

14 9. Respondent is subject to disciplinary action pursuant to Code section 4521,
15 subdivision (a)(4), on the grounds of unprofessional conduct, in that on or about November 4,
16 2008, Respondent possessed the controlled substance Marijuana, in violation of Code section
17 4060.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious to Himself)**

20 10. Respondent is subject to disciplinary action pursuant to Code section 4521,
21 subdivision (a)(5), on the grounds of unprofessional conduct, in that on or about August 30, 2008,
22 Respondent used alcohol to an extent or in a manner dangerous or injurious to himself, as more
23 particularly set forth in paragraph 7, subparagraphs a and b, above.

24 **FACTORS IN AGGRAVATION**

25 11. On May 17, 2005, in the Superior Court, San Luis Obispo County, San Luis Obispo
26 Branch, California, in the matter entitled *People vs. Arthur Ray Barnes, II*, Respondent was
27 convicted by the court following his plea of nolo contendere to a violation of Penal Code section
28 415, subdivision (1) (unlawfully fighting in a public place), a misdemeanor.

1 12. The circumstances of the conviction, which Respondent duly disclosed in his
2 application for licensure, were that on or about April 23, 2005, Respondent was arrested for
3 battery, following an incident during which Respondent initiated a fist fight, when he was asked
4 to leave a party at a private residence.

5 13. On April 16, 2008, the Board issued a letter of warning to Respondent regarding the
6 conviction referenced paragraphs 11 and 12, above.

7 **PRAYER**


8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
10 issue a decision:

11 1. Revoking or suspending Psychiatric Technician License Number PT 34245, issued to
12 Arthur Ray Barnes, II;

13 2. Ordering Arthur Ray Barnes, II to pay the Board of Vocational Nursing and
14 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3; and,

16 3. Taking such other and further action as deemed necessary and proper.
17

18 DATED: April 27, 2010.

19 
TERESA BELLO-JONES, J.D., M.S.N., R.N.
20 Executive Officer
21 Board of Vocational Nursing and Psychiatric Technicians
22 Department of Consumer Affairs
23 State of California
24 Complainant
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